

**IN THE HIGH COURT OF UTTARANCHAL  
AT NAINITAL  
Criminal Revision No. 38 of 2002**

Shailendra @ Dalip Singh

..Revisionist

Versus

State of Uttaranchal  
& another

..Opposite Parties

Sri V.S. Mishra learned Senior Counsel appears on behalf of revisionist  
Sri Nandan Arya learned A.G.A. appears on behalf of opposite party.

**Hon'ble B.C. Kandpal**

This criminal revision under section 397/401 Cr.P.C. read with Section 482 Cr.P.C. has been filed by the revisionist/petitioner Shailendra @ Delip Singh against the judgment and order dated 22.05.2002 passed by District and Sessions Judge, Haridwar.

In brief, the facts of the case are that the Sessions trial No. 127/96 pending for disposal before the court of Sessions Judge, Haridwar. In the trial prosecution produced its witnesses and thereafter the arguments of the parties was over. The case was posted for judgment and prior to this the application under section 311 of the Cr.P.C. was filed from the side of the defence to summon and examine witnesses which are mentioned in the chargesheet but were not produced by the prosecution. The prayer was refused by the Sessions Judge and feeling aggrieved against the order of the Sessions Judge a petition under section 482 Cr.P.C. was preferred before the Hon'ble Allahabad High Court which was dismissed, whereupon Special Leave Petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the SLP with the observation that the plea could be raised at the time of the appeal if reason arises to file

the same against the judgment to be rendered by the Sessions Judge.

After the said decision, the final judgment of the Sessions Trial Court could not be delivered on account of the transfer of the Sessions Judge. After the new incumbent took charge, the Session Trial again placed for argument and the defence again moved an application under section 311 Cr.P.C. The Sessions Judge decided the application vide order dated 02.04.2002.

The order of the Sessions Judge dated 02.04.2002 was again challenged before the High Court and this Court allowed the petition and directed the Sessions Judge to hear the parties and decide the application under section 311 Cr.P.C. afresh giving reasons therein.

The petitioner place application before the learned Sessions Judge and the application under section 311 Cr.P.C. was again dismissed by the Sessions Judge vide order dated 22.05.2002.

Feeling aggrieved by the aforesaid impugned order, the petitioner has filed the revision/petition under section 311/401 Cr.P.C. read with 482 Cr.P.C.

Heard learned counsel for the revisionist and learned A.G.A. Also perused the record.

Learned counsel for the revisionist has argued that the revisionist has given the reason for summoning the 10 witnesses shown in the chargesheet and all these witnesses have been deliberately withheld by the prosecution because those witnesses were not supporting the prosecution case. The further submission advanced by the learned counsel for the revisionist is that the learned Sessions Judge has not taken into consideration the direction issued by the Hon'ble High Court in

its judgment dated 06.05.2002. It has been submitted that the Hon'ble Supreme Court in various judgments has observed that the power to summon the witnesses can be exercised at any stage of proceeding provided examination of such person is essential for the decision of the case. The court has duty to examine such witnesses, even after the prosecution evidence is closed.

In order to substantiate his submission, learned counsel for the revisionist has cited following decisions before me:-

1. **A.I.R. 1999 SCC page 1346**
2. **A.I.R. 1968 SCC page 178**
3. **A.I.R. 1999 (39) ACC page 665 (Supreme Court)**

I have gone through the judgments cited by the learned counsel for the revisionist and I am of the view that these judgments do not apply to the facts and circumstances of the present case. The Hon'ble Apex Court has clearly settled the law that the Court is duty bound to examine such witnesses under Section 311 Cr.P.C. if it appears to be essential for just decision of the case.

The Hon'ble Apex Court in the decision cited before me **1999 (39) ACC 665 (SC) Raj Deo Sharma Vs. State of Bihar** has clearly observed that "even if the prosecution evidence is closed, it is still open to the prosecution to invoke the power of the court under Section 311 Cr.P.C. In case if evidence of any witness appears to the court to be essential for the just decision of the case it is the duty of the court to examine or recall and reexamine any such person.

Now, keeping in view the aforesaid, if the impugned order passed by the Sessions Judge is perused then the same will make the picture clean. The learned Sessions Judge in the

impugned order has specifically observed that there is no justification or reasonable cause to summon the witnesses under Section 311 Cr.P.C. The learned Sessions Judge has also recorded this findings that the prosecution does not find any necessity to produce any prosecution witness.

The session trial has been languishing before the trial court since 1996. It is a matter of concern that the trial once reached to the stage of argument and thereafter on one ground or the other it has not yet been concluded.

The revisionist in case if intends to produce any witness which he thing proper then those witnesses may be produced by the revisionist in his defence. The present case appears to be a case of miscues of the provision of 482 Cr.P.C. The provision of 482 Cr.P.C. is not meant for these purposes. It is meant only to prevent the abuse of process.

It would be relevant to quote the landmark decision of the Apex Court in this regard as the Hon'ble Supreme Court in a case reported in **1995 SCC (Criminal) 634 Ganesh Narayan Hegde Vs. S. Bangarppa** has shown its concern with following lines:-

*“Repeated admonition of the Supreme Court have not deterred superior courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it, it cannot be a matter of course.*

*It is common knowledge that currently the criminal courts excel in slow motion. The slow motion become much slower when powerful or rich and influential persons figure as accused. F.I.R.s are quashed. Charges are quashed. Interlocutory orders are interfered with.*

*At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll, the witnesses are won over, evidence disappears, the prosecution loses interest, the result is an all too familiar one.”*

With the aforesaid observation I do not find any force in the present revision and the same is dismissed.

**(B.C. Kandpal, J.)**

July 16<sup>th</sup>, 2004  
ASWAL